

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	CC Docket No. 98-108
Beehive Telephone Company, Inc.)	
Beehive Telephone, Inc. Nevada)	
)	Transmittal No. 11
Tariff F.C.C. No. 1)	

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ORDER ON RECONSIDERATION

Adopted: March 31, 1999

Released: March 31, 1999

By the Commission:

I.**INTRODUCTION**

1. On December 31, 1998, Beehive Telephone Company, Inc., and Beehive Telephone, Inc., Nevada (Beehive) filed a petition for reconsideration of the *Beehive Tariff Investigation Order*.¹ Beehive seeks reconsideration of the rate prescriptions and refund requirements.² AT&T Corp. (AT&T) filed an opposition³ and Beehive filed a reply.⁴ For the reasons stated below, we deny Beehive's petition in its entirety. We direct the Common Carrier Bureau (Bureau), however, to expand its pending section 205 investigation of Beehive to include the issue of whether Beehive is earning an adequate return on the portion of its investment that is properly assigned to regulated, interstate telecommunications services.⁵

¹ Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Transmittal No. 11, CC Docket 98-108, Memorandum Opinion and Order, FCC No. 98-320 (rel. December 1, 1998) (*Investigation Order*).

² Petition for Reconsideration, filed December 31, 1998 (*Petition*).

³ Opposition to Petition for Reconsideration, filed January 13, 1999.

⁴ Reply to Opposition to Petition for Reconsideration, filed January 22, 1999.

⁵ See *Investigation Order* at ¶¶ 1, 23, and 29.

II.

BACKGROUND

2. On June 16, 1998, Beehive filed Transmittal No. 11 revising its FCC Tariff No. 1 to establish rates for the tandem switched transport facility element, the tandem switched transport termination element, and the transport interconnection charge (TIC) pursuant to the Commission's *Access Charge Reform Order*.⁶ Beehive also filed premium and non-premium local switching rates that were above prescribed levels. On June 30, 1998, the Bureau rejected Beehive's proposed local switching rates and suspended that portion of the tariff that revised Beehive's tandem switched transport rates.⁷ On October 7, 1998, the Bureau designated for investigation Beehive's rates for tandem switched transport facility, tandem switched transport termination, and TIC.⁸

3. On December 1, 1998, we released the *Investigation Order*, concluding our investigation of Beehive Transmittal No. 11. In that Order, we found that Beehive failed to meet its burden of proof under section 204(a)(1) of the Communications Act of 1934, as amended (Act),⁹ to justify its proposed tandem switched transport facility, tandem switched transport termination, and TIC rates. We further found that we were unable to rely on supporting information submitted by Beehive for the purpose of prescribing rates. We therefore established rates for the purpose of calculating refunds pursuant to section 204 for those services based on the National Exchange Carrier Association's (NECA) rates, and directed Beehive to refund to its customers, with interest, the difference between NECA's rates and the rates filed by Beehive in June, 1998.¹⁰ We also found those rates to be lawful under section 205 for prescriptive purposes.

III.

DISCUSSION

4. Beehive raises a number of legal and procedural arguments in its Petition, and attaches four exhibits it wants us to weigh in this reconsideration order. We will address the exhibits and the related arguments first.

⁶ Beehive Access Tariff FCC No. 1, Transmittal No. 11 (filed June 16, 1998).

⁷ *Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada*, CC Docket No. 98-108, Order, 13 FCC Rcd 12647 (1998).

⁸ *Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada*, CC Docket No. 98-108, Order Designating Issues for Investigation, DA 98-2030 (rel. Com. Car. Bur., October 7, 1998).

⁹ 47 U.S.C. § 204(a)(1).

¹⁰ *Investigation Order* at ¶¶ 22, 26, and 27.

5. The exhibits are as follows. Exhibit 1 contains two income statements for the period January 1, 1998 to November 30, 1998. One statement is for Beehive Telephone Company, Inc., and the other is for Beehive Telephone Company, Inc, Nevada. Exhibit 2 contains a Declaration of Arthur W. Brothers, an officer of Beehive, (Brothers Declaration) and a document entitled "The Beehive Telephone Companies -- Projected Income Statement For The Period From 01/01/99 to 12/31/99." The Brothers Declaration purports to set forth, in general terms, the current financial status of Beehive, and describes some recent capital investments made by Beehive. Exhibit 3 is a copy of Beehive's Transmittal No. 3 tariff filing, dated June 2, 1995. Exhibit 4 is a document entitled "Beehive's FCC-Prescribed Interstate Revenue Requirement," which displays some of the carrier's interstate rates and revenues.

6. Under section 405(a) of the Act and section 1.106(c) of the Commission's rules, there is a requirement that evidence presented in a petition for reconsideration that was not previously submitted in a particular proceeding is permitted only if: (1) facts or circumstances have changed since the last opportunity to present such matters;¹¹ (2) the facts were unknown to the petitioner until after its last opportunity to present such matters, and could not, through the exercise of due diligence, have been learned prior to such opportunity;¹² or (3) the Commission determines that reliance on such facts is required in the public interest.¹³ We find that Beehive satisfies the requirements of section 405(a) of the Communications Act and section 1.106(c) of the Commission's rules with regard to its attached exhibits.

7. Taken together, Exhibit 1, the Projected Income Statement for the period from January 1, 1999 to December 31, 1999 contained within Exhibit 2, and the Brothers Declaration purport to demonstrate that Beehive operated its regulated telecommunications business at a loss in 1998, and that it will also experience a loss in 1999. The apparently unaudited financial documents are of very limited value because Beehive does not identify which expenses should be allocated to jurisdictional (interstate) service and which amounts should be allocated to non-jurisdictional (intrastate) services. These statements, therefore, do not show that any alleged loss is attributable to Beehive's provisioning of interstate services. Further, the Projected Income Statement contained within Exhibit 2 alleges a net loss on a consolidated company basis, and does not separate out the two Beehive entities. These exhibits shed no additional light on the issue of whether Beehive's rates for the interstate transport services provided under Transmittal No. 11 are just and reasonable.

¹¹ 47 C.F.R. §§ 1.106(c)(1), (b)(2)(i); 47 U.S.C. § 405(a). Section 405(a) of the Communications Act provides that "no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should be taken on any reconsideration." 47 U.S.C. § 405(a).

¹² 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.106(c)(1), (b)(2)(ii).

¹³ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(c)(2).

8. The core argument in Beehive's petition is the assertion that its financial integrity is in jeopardy as a result of the successive rate determinations we have ordered.¹⁴ We intend to address this argument. It is not feasible, however, to make all of the determinations necessary to assess this claim within the statutory time frame that applies to the instant rate proceeding.¹⁵ We have already directed the Bureau to investigate the manner in which Beehive develops its interstate rate base and allowed interstate expenses under Parts 32, 64 and 36 of our rules.¹⁶ We now direct the Bureau to add to this investigation the following issues: (1) whether Beehive is earning an adequate return on investment allocated to interstate regulated telecommunications services; and (2) whether all investments and expenses assigned by Beehive to the interstate jurisdiction are used and useful in the provisioning of interstate regulated service.¹⁷

9. Regarding the remainder of the Petition, Beehive, although it raises numerous legal and procedural challenges, we have considered these and find them to be without merit. We also find that Beehive presents no new arguments or facts that would provide us with a basis for changing the decisions that we made in the *Investigation Order*. We therefore affirm our decision for the reasons stated therein.

IV.

ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 201(b), 204(a), and 205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b), 204(a), and 205, that the petition for reconsideration filed by Beehive Telephone Company, Inc. **IS HEREBY DENIED** as discussed above.

11. **IT IS FURTHER ORDERED** that pursuant to section 205 of the Communications Act of 1934, as amended, 47 U.S.C. § 205, the issues specified in paragraph 8 above be added to the Common Carrier Bureau's section 205 investigation of Beehive pursuant to the Commission's Memorandum Opinion and Order concluding the investigation of Beehive's Transmittal No. 11.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

¹⁴ Petition at 16-17; see also *Investigation Order* at ¶¶ 2-7.

¹⁵ 47 U.S.C. § 405(b)(1).

¹⁶ See *Investigation Order* at ¶¶ 1, 23, and 29.

¹⁷ See 47 C.F.R. § 65.800.